UNITED STATES DISTRICT COURT		EASTERN DISTRICT OF TEXAS
JEREMY LYNN PHILLIPS,	§	
Movant,	§ §	
versus	§ §	CIVIL ACTION NO. 1:23-CV-173
UNITED STATES OF AMERICA,	§ § 8	
Respondent.	§	

MEMORANDUM ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Jeremy Lynn Phillips, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this motion to vacate. The magistrate judge recommends dismissing the motion to vacate as barred by the applicable statute of limitations. To date, the parties have not filed objections to the report.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. After careful review, the court finds that the findings of fact and conclusions of law of the United States Magistrate Judge are correct.

ORDER

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge (#5) is **ADOPTED**. A final judgment will be entered dismissing the motion to vacate.

Furthermore, the court is of the opinion movant is not entitled to a certificate of

appealability. An appeal from a judgment denying post-conviction collateral relief may not

proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253. The standard

for a certificate of appealability requires the movant to make a substantial showing of the denial

of a federal constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000); Elizalde

v. Dretke, 362 F.3d 323, 328 (5th Cir. 2004). To make a substantial showing, the movant need

not establish that he would prevail on the merits. Rather, he must demonstrate that the issues are

subject to debate among jurists of reason, that a court could resolve the issues in a different

manner, or that the questions presented are worthy of encouragement to proceed further. See

Slack, 529 U.S. at 483-84. Any doubt regarding whether to grant a certificate of appealability

should be resolved in favor of the movant, and the severity of the penalty may be considered in

making this determination. See Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the movant has not shown that the issue of whether his motion to vacate is

barred by the applicable statute of limitations is subject to debate among jurists of reason. The

factual and legal questions raised by movant have been consistently resolved adversely to his

position and the questions presented are not worthy of encouragement to proceed further. As a

result, a certificate of appealability shall not issue in this matter.

SIGNED at Beaumont, Texas, this 7th day of December, 2023.

MARCIA A. CRONE

Maria a. Crone

UNITED STATES DISTRICT JUDGE

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